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Attorneys for Defendant
MEECO MANUFACTURING CO., INC.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHIMNEY SWEEPING LOG, LLC,
Plaintiff,

v.

MEECO MANUFACTURING CO., INC. and
COEUR D'ALENE FIBER FUELS, INC. d/b/a
ATLAS,

Defendants.

Case No. C-07-5671 WHA

**STIPULATED PROTECTIVE
ORDER**

1 Plaintiff Chimney Sweeping Log, LLC ("CSL") and Defendant Meeco Manufacturing
2 Co., Inc. ("Meeco") hereby stipulate to the following protective order, which is made in
3 accordance with the standing orders of the Northern District Court. Defendant Coeur D'Alene
4 Fiber Fuels, Inc. d/b/a Atlas ("Atlas") is not a party to this Protective Order.

5 1. PURPOSE AND LIMITATIONS

6 Disclosure and discovery activity in this action are likely to involve production of
7 confidential, proprietary, or private information for which special protection from public
8 disclosure and from use for any purpose other than prosecuting this litigation would be
9 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
10 following Stipulated Protective Order. The parties acknowledge that this Order does not confer
11 blanket protections on all disclosures or responses to discovery and that the protection it affords
12 extends only to the limited information or items that are entitled under the applicable legal
13 principles to treatment as confidential. The parties further acknowledge, as set forth in Section
14 10 below, that this Stipulated Protective Order creates no entitlement to file confidential
15 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed
16 and reflects the standards that will be applied when a party seeks permission from the court to
17 file material under seal.

18 2. DEFINITIONS

19 2.1 Party: any party to this action, including all of its officers, directors,
20 employees, consultants, retained experts, and outside counsel (and their support staff).

21 2.2 Disclosure or Discovery Material: all items or information, regardless of
22 the medium or manner generated, stored, or maintained (including, among other things,
23 testimony, transcripts, or tangible things) that are produced or generated in disclosures or
24 responses to discovery in this matter.

25 2.3 "Confidential" Information or Items: information (regardless of how
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1 generated, stored or maintained) or tangible things that qualify for protection under standards
2 developed under F.R.Civ.P. 26(c).

3 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items:
4 extremely sensitive “Confidential Information or Items” whose disclosure to another Party or
5 nonparty would create a substantial risk of serious injury that could not be avoided by less
6 restrictive means.

7 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material
8 from a Producing Party.

9 2.6 Producing Party: a Party or non-party that produces Disclosure or
10 Discovery Material in this action.

11 2.7. Designating Party: a Party or non-party that designates information or
12 items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly
13 Confidential — Attorneys’ Eyes Only.”

14 2.8 Protected Material: any Disclosure or Discovery Material that is
15 designated as “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

16 2.9. Outside Counsel: attorneys who are not employees of a Party but who are
17 retained to represent or advise a Party in this action.

18 2.10 House Counsel: attorneys who are employees of a Party.

19 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well
20 as their support staffs).

21 2.12 Expert: a person with specialized knowledge or experience in a matter
22 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
23 witness or as a consultant in this action and who is not a past or a current employee of a Party or
24 of a competitor of a Party and who, at the time of retention, is not anticipated to become an
25 employee of a Party or a competitor of a Party. This definition includes a professional jury or
26 trial consultant retained in connection with this litigation.

27 2.13 Professional Vendors: persons or entities that provide litigation support
28 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;

1 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
2 subcontractors.

3 3. SCOPE

4 The protections conferred by this Stipulation and Order cover not only Protected Material
5 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
6 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
7 parties or counsel to or in court or in other settings that might reveal Protected Material.

8 4. DURATION

9 Even after the termination of this litigation, the confidentiality obligations imposed by
10 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
11 order otherwise directs.

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection.

14 Each Party or non-party that designates information or items for protection under this Order must
15 take care to limit any such designation to specific material that qualifies under the appropriate
16 standards. A Designating Party must take care to designate for protection only those parts of
17 material, documents, items, or oral or written communications that qualify – so that other
18 portions of the material, documents, items, or communications for which protection is not
19 warranted are not swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or
20 routinized designations are prohibited. Designations that are shown to be clearly unjustified, or
21 that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case
22 development process, or to impose unnecessary expenses and burdens on other parties), expose
23 the Designating Party to sanctions. If it comes to a Party's or a non-party's attention that
24 information or items that it designated for protection do not qualify for protection at all, or do not
25 qualify for the level of protection initially asserted, that Party or non-party must promptly notify
26 all other parties that it is withdrawing the mistaken designation.

27 5.2 Manner and Timing of Designations. Except as otherwise provided in this
28 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or

1 ordered, material that qualifies for protection under this Order must be clearly so designated
2 before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (apart from transcripts of
5 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” at the top
7 of each page that contains protected material. If only a portion or portions of the material on a
8 page qualifies for protection, the Producing Party also must clearly identify the protected
9 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
10 portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

12 A Party or non-party that makes original documents or materials available
13 for inspection need not designate them for protection until after the inspecting Party has
14 indicated which material it would like copied and produced. During the inspection and before
15 the designation, all of the material made available for inspection shall be deemed “HIGHLY
16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the
17 documents it wants copied and produced, the Producing Party must determine which documents,
18 or portions thereof, qualify for protection under this Order, then, before producing the specified
19 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the top of each page that
21 contains Protected Material. If only a portion or portions of the material on a page qualifies for
22 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
23 making appropriate markings in the margins) and must specify, for each portion, the level of
24 protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
25 ATTORNEYS’ EYES ONLY”).

26 (b) for testimony given in deposition or in other pretrial or trial
27 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the
28 record, before the close of the deposition, hearing, or other proceeding, all protected testimony,

1 and further specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL –
2 ATTORNEYS’ EYES ONLY.” When it is impractical to identify separately each portion of
3 testimony that is entitled to protection, and when it appears that substantial portions of the
4 testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the
5 testimony may invoke on the record (before the deposition or proceeding is concluded) a right to
6 have up to 20 days to identify the specific portions of the testimony as to which protection is
7 sought and to specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that
9 are appropriately designated for protection within the 20 days shall be covered by the provisions
10 of this Stipulated Protective Order.

11 Transcript pages containing Protected Material must be separately bound
12 by the court reporter, who must affix to the top of each such page the legend
13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as
14 instructed by the Party or nonparty offering or sponsoring the witness or presenting the
15 testimony.

16 (c) for information produced in some form other than documentary,
17 and for any other tangible items, that the Producing Party affix in a prominent place on the
18 exterior of the container or containers in which the information or item is stored the legend
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only
20 portions of the information or item warrant protection, the Producing Party, to the extent
21 practicable, shall identify the protected portions, specifying whether they qualify as
22 “Confidential” or as “Highly Confidential – Attorneys’ Eyes Only.”

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
24 failure to designate qualified information or items as “Confidential” or “Highly Confidential –
25 Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right to secure
26 protection under this Order for such material. If material is appropriately designated as
27 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” after the material was initially
28 produced, the Receiving Party, on timely notification of the designation, must make reasonable

1 efforts to assure that the material is treated in accordance with the provisions of this Order.

2 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

3 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
4 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
5 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
6 waive its right to challenge a confidentiality designation by electing not to mount a challenge
7 promptly after the original designation is disclosed.

8 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
9 Designating Party's confidentiality designation must do so in good faith and must begin the
10 process by conferring directly (in voice to voice dialogue; other forms of communication are not
11 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must
12 explain the basis for its belief that the confidentiality designation was not proper and must give
13 the Designating Party an opportunity to review the designated material, to reconsider the
14 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
15 designation. A challenging Party may proceed to the next stage of the challenge process only if
16 it has engaged in this meet and confer process first.

17 6.3 Judicial Intervention. A Party that elects to press a challenge to a
18 confidentiality designation after considering the justification offered by the Designating Party
19 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule
20 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the
21 challenge. Each such motion must be accompanied by a competent declaration that affirms that
22 the movant has complied with the meet and confer requirements imposed in the preceding
23 paragraph and that sets forth with specificity the justification for the confidentiality designation
24 that was given by the Designating Party in the meet and confer dialogue.

25 The burden of persuasion in any such challenge proceeding shall be on the
26 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the
27 material in question the level of protection to which it is entitled under the Producing Party's
28 designation.

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a non-party in connection with this case only for
4 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
5 disclosed only to the categories of persons and under the conditions described in this Order.
6 When the litigation has been terminated, a Receiving Party must comply with the provisions of
7 section 11, below (FINAL DISPOSITION).

8 Protected Material must be stored and maintained by a Receiving Party at a
9 location and in a secure manner that ensures that access is limited to the persons authorized
10 under this Order.

11 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
12 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving
13 Party may disclose any information or item designated CONFIDENTIAL only to:

14 (a) the Receiving Party's Outside Counsel of record in this action, as
15 well as employees of said Counsel to whom it is reasonably necessary to disclose the information
16 for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is
17 attached hereto as Exhibit A;

18 (b) the officers, directors, and employees (including House Counsel)
19 of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who
20 have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

21 (c) Experts (as defined in this Order) of the Receiving Party to whom
22 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
23 Bound by Protective Order" (Exhibit A);

24 (d) the Court and its personnel;

25 (e) court reporters, their staffs, and professional vendors to whom
26 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
27 Bound by Protective Order" (Exhibit A);

28 (f) during their depositions, witnesses in the action to whom

disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author of the document or the original source of the information.

7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

(a) the Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

(b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4, below, have been followed;

(c) the Court and its personnel;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

(e) the author of the document or the original source of the information.

7.4 Procedures for Approving Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items to "Experts"

(a) Unless otherwise ordered by the court or agreed in writing by the Designating Party, a Party that seeks to disclose to an "Expert" (as defined in this Order) any

1 information or item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS'
2 EYES ONLY" first must make an email request to the Designating Party that (1) identifies in
3 general terms the HIGHLY CONFIDENTIAL information that the Receiving Party seeks
4 permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and
5 state of his or her primary residence, (3) attaches a copy of the Expert's current resume, and (4)
6 identifies the Expert's current employer(s)..

7 (b) A Party that makes a request and provides the information
8 specified in the preceding paragraph may disclose the subject Protected Material to the identified
9 Expert unless, within two court days of delivering the request, the Party receives a written
10 objection from the Designating Party. Any such objection must set forth in detail the grounds on
11 which it is based.

12 (c) A Party that receives a timely written objection must meet and
13 confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the
14 matter by agreement. If no agreement is reached, the Party seeking to make the disclosure to the
15 Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local
16 Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion must
17 describe the circumstances with specificity, set forth in detail the reasons for which the
18 disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would
19 entail and suggest any additional means that might be used to reduce that risk. In addition, any
20 such motion must be accompanied by a competent declaration in which the movant describes the
21 parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and
22 confer discussions) and sets forth the reasons advanced by the Designating Party for its refusal to
23 approve the disclosure.

24 In any such proceeding the Party opposing disclosure to the Expert shall
25 bear the burden of proving that the risk of harm that the disclosure would entail (under the
26 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to
27 its Expert.

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1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
 2 OTHER LITIGATION.

3 If a Receiving Party is served with a subpoena or an order issued in other
 4 litigation that would compel disclosure of any information or items designated in this action as
 5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the
 6 Receiving Party must so notify the Designating Party, in writing (by fax, if possible)
 7 immediately and in no event more than three court days after receiving the subpoena or order.
 8 Such notification must include a copy of the subpoena or court order.

9 The Receiving Party also must immediately inform in writing the Party who
 10 caused the subpoena or order to issue in the other litigation that some or all the material covered
 11 by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party
 12 must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action
 13 that caused the subpoena or order to issue.

14 The purpose of imposing these duties is to alert the interested parties to the
 15 existence of this Protective Order and to afford the Designating Party in this case an opportunity
 16 to try to protect its confidentiality interests in the court from which the subpoena or order issued.
 17 The Designating Party shall bear the burdens and the expenses of seeking protection in that court
 18 of its confidential material – and nothing in these provisions should be construed as authorizing
 19 or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

20 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 22 Material to any person or in any circumstance not authorized under this Stipulated Protective
 23 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
 24 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,
 25 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
 26 this Order, and (d) request such person or persons to execute the “Acknowledgment and
 27 Agreement to Be Bound” that is attached hereto as Exhibit A.

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1 10. FILING PROTECTED MATERIAL. Without written permission from the
 2 Designating Party or a court order secured after appropriate notice to all interested persons, a
 3 Party may not file in the public record in this action any Protected Material. A Party that seeks
 4 to file under seal any Protected Material must comply with Civil Local Rule 79-5.

5 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
 6 Producing Party, within sixty days after the final termination of this action, each Receiving Party
 7 must return all Protected Material to the Producing Party. As used in this subdivision, "all
 8 Protected Material" includes all copies, abstracts, compilations, summaries or any other form of
 9 reproducing or capturing any of the Protected Material. With permission in writing from the
 10 Designating Party, the Receiving Party may destroy some or all of the Protected Material instead
 11 of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party
 12 must submit a written certification to the Producing Party (and, if not the same person or entity,
 13 to the Designating Party) by the sixty day deadline that identifies (by category, where
 14 appropriate) all the Protected Material that was returned or destroyed and that affirms that the
 15 Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms
 16 of reproducing or capturing any of the Protected Material. Notwithstanding this provision,
 17 Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal
 18 memoranda, correspondence or attorney work product, even if such materials contain Protected
 19 Material. Any such archival copies that contain or constitute Protected Material remain subject
 20 to this Protective Order as set forth in Section 4 (DURATION), above.

21 12. MISCELLANEOUS

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
 23 person to seek its modification by the Court in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this
 25 Protective Order no Party waives any right it otherwise would have to object to disclosing or
 26 producing any information or item on any ground not addressed in this Stipulated Protective

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1 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
2 the material covered by this Protective Order.

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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5 DATED: February ²⁰2008

TOWNSEND and TOWNSEND and CREW LLP

6
7
8 By: 

Marc M. Gorelnik
Laurie H. van Löben Sels
Jennifer D. Arkowitz

9
10 *Attorneys for Plaintiff*
Chimney Sweeping Log, LLC

11
12 DATED: February ²⁰2008

LYNCH, GILARDI & GRUMMER PC

13
14
15 By: 

James Parton II
Frank D. Conway

16
17 *Attorneys for Defendant*
Meeco Manufacturing Co., Inc.

18
19 PURSUANT TO STIPULATION, IT IS SO ORDERED.

20
21 DATED: _____

22 _____
Honorable William Alsup
United States District Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
 [print or type full address], declare under penalty of perjury that I have read in its entirety and
 understand the Stipulated Protective Order that was issued by the United States District Court for the
 Northern District of California on _____ [date] in the case of **Chimney Sweeping
 Log, LLC v. Meeco Manufacturing Co., Inc. and Coeur D'Alene Fiber Fuels, Inc. d/b/a Atlas,
 Case No. C-07-05671 WHA**. I agree to comply with and to be bound by all the terms of this
 Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose
 me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose
 in any manner any information or item that is subject to this Stipulated Protective Order to any person
 or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern
 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if
 such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone number] as
 my California agent for service of process in connection with this action or any proceedings related to
 enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
 [printed name]

Signature: _____
 [signature]

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